

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	Case No. 1:03CR197
)	
Plaintiff,)	
)	
vs.)	Judge Ann Aldrich
)	
JAMES M. COLLINS,)	
)	
Defendant.)	<u>MEMORANDUM AND ORDER</u>

This is a criminal case in which defendant James M. Collins (“Collins”) has been convicted of bank fraud and failure to file a tax return. On June 23, 2004, this court granted Collins’s motion to stay his transfer from the federal facility in which he is currently incarcerated (Docket No. 20). On July 21, 2004, the court lifted the stay and denied Collins’s motion to modify his sentence (Docket No. 25). Now before the court is a new motion for modification filed by Collins (Docket No. 27).

Collins bases his motion solely on the Supreme Court’s recent decisions in *Blakely v. Washington*, 124 S.Ct. 2531 (2004) and *United States v. Booker*, 125 S.Ct. 738 (2005). He contends that he is eligible for resentencing as a result of the latter case’s holding that the mandatory application of the United States Sentencing Guidelines is unconstitutional.

However, the Sixth Circuit has made it abundantly clear that the rule announced by *Booker* does not apply retroactively. *Humphress v. United States*, 398 F.3d 855 (6th Cir. 2005). While “the *Booker* Court

explicitly held that the holding applies to all cases on direct review,” *id.* at 861, the Circuit concluded that “*Booker's* rule does not apply retroactively in collateral proceedings.” *Id.* at 860.

Collins was convicted as a result of a plea agreement entered June 12, 2003, more than a year before the United States Supreme Court issued its ruling in *Booker*. His case was not pending on direct appeal when the ruling was issued. This court is therefore not empowered to revisit the issue of Collins’s sentence under a post-*Booker* guidelines framework.

For the foregoing reasons, the court denies Collins’s motion to modify his sentence.

IT IS SO ORDERED.

s/Ann Aldrich
ANN ALDRICH
UNITED STATES DISTRICT JUDGE

Dated: June 21, 2005